IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7026 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KINARIWALA R.J.K INDUSTRIES - Petitioner(s)

Versus

BHOGILAL M PANCHAL - Respondent(s)

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Appearance :

NANAVATI & NANAVATI for Petitioner(s) : 1,
MR PS CHAMPANERI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 20/10/2005

CAV JUDGMENT

1.By filing this petition, the petitioner has challenged the judgment and award passed by Presiding Officer, Labour Court, Ahmedabad dated 05.04.1991 in Reference (LCA) No. 1412 of 1985, by which the Labour Court has

directed the petitioner to reinstate the respondent – workman in service to his original post with back wages.

2. It appears from the record that the respondent – workman was appointed by the petitioner – company as clerk on 01.03.1973. However, his services were terminated from 04.11.1976 for the misconduct alleged against him. Thereafter, the respondent – workman raised industrial dispute before the Labour Court which was numbered as Reference (LCA) No. 1183 of 1976 which came to be adjudicated by the Labour Court and vide award dated 28.07.1983 directed the petitioner to reinstate the respondent – workman. It is to be noticed that the respondent – workman was again retrenched by the petitioner – company by order dated 13.06.1985 on the ground that the petitioner – company is facing serious financial difficulties. Ultimately, the respondent – workman has raised the industrial dispute which was referred to the Labour Court and numbered as Reference (LCA) No. 1412 of 1985. The Labour Court, after recording the oral as well as the documentary evidence, came to the conclusion that the action of the petitioner – company retrenching the respondent – workman is illegal and arbitrary and as a result

thereof had directed the petitioner – company to reinstate the respondent – workman in service to his original post with back wages for the intervening period.

3. Being aggrieved and dissatisfied with the said judgment and award dated 05.04.1991 passed by the Presiding Officer, Labour Court, Ahmedabad, the petitioner has approached this Court by filing this petition and has prayed to quash and set aside the same.

4. Heard the learned advocates for the parties and perused the material on record.

5. The Labour Court came to the conclusion that the petitioner – company had examined two witnesses i.e.,Bhupendra Shah and Chandulal Shah who have stated that the respondent was working as clerk prior to their joining in service. The Labour Court also came to the conclusion that the petitioner – company was functioning and/or working on overtime basis in the year 1985-86 and therefore it cannot be said that the company was facing serious financial difficulties. The Labour Court has also come to the conclusion that the petitioner – company has not produced any documentary evidence to show that the petitioner is facing serious financial difficulties and the work load was reduced

and, therefore, the Labour Court held that the action of the respondent is illegal and arbitrary.

6. It is pertinent to note that the law on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution of India is already settled by the Supreme Court. In the case of Surya Dev Rai Vs. Ram Chander Rai, reported in (2003) 6 SCC 675, the Supreme Court has observed that while examining a petition under Article 227 of the Constitution of India, a writ of certiorari or the exercise of supervisory jurisdiction is not available to correct mere errors of fact or of law unless the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of the law and a grave injustice or gross failure of justice has occasioned thereby. The Supreme Court further observed as under :

> “The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave

injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdiction is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari and supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable to correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis."

7. The aforesaid principles have been reiterated by the Supreme Court in the case of Yashwant Sakhalkar Vs. Hirabat Kamat Mhamai, reported in (2004) 6 SCC 71 and in the case of Ranjeet Singh Vs. Ravi Prakash reported in AIR 2004 SC 3892.

8. In this view of the matter, I do not find any substance

in any of the contentions raised by the learned advocate appearing for the petitioner and as a result thereof, the petition is required to be dismissed. This petition is accordingly dismissed. Rule discharged. Interim relief granted earlier stands vacated. No costs.

(SHARAD D DAVE, J)

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